

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

CITY CLERK DEPT.

DEPARTMENT: Engineering Department

05 APR 11 PM 1:56

AGENDA DATE: April 19, 2005

CONTACT PERSON/PHONE: Irene Ramirez, ext. 4431

DISTRICT(S) AFFECTED: Citywide

SUBJECT:

That the City Manager be authorized to sign a Consultant Services Agreement by and between the **CITY OF EL PASO** and **AMEC EARTH & ENVIRONMENTAL, INC.**, for environmental engineering services for a period of two (2) years in an amount not to exceed SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$750,000.00).

BACKGROUND / DISCUSSION:

The environment consultant shall be responsible to provide environmental services that include investigations of soil and water contamination on City properties, environmental testing services, asbestos surveys, and environmental site assessments.

PRIOR COUNCIL ACTION:

The City Council has not previously considered this item.

AMOUNT AND SOURCE OF FUNDING:


This item will be funded on a per project basis. The item has not been budgeted. No funding information is available. This item does not require a budget transfer.

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD:  (Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA: _____

CITY MANAGER: _____

DATE: _____

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Consultant Services Agreement by and between the **CITY OF EL PASO** and **AMEC EARTH & ENVIRONMENTAL, INC.**, for environmental engineering services for a period of two (2) years in an amount not to exceed SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$750,000.00).

ADOPTED this ____ day of _____, 2005.


THE CITY OF EL PASO

Joe Wardy, Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Theresa Cullen-Garney
Deputy City Attorney

APPROVED AS TO CONTENT:

_____
Rick Connor, P.E.
City Engineer

STATE OF TEXAS)
)
COUNTY OF EL PASO) **CONSULTANT SERVICES AGREEMENT**

This Agreement is made this ____ day of _____, 2005 by and between the **CITY OF EL PASO**, a Texas municipality, hereinafter referred to as the "City," and **AMEC Earth & Environmental, Inc.**, an S corporation, hereinafter referred to as the "Consultant."

WHEREAS, the Consultant provides engineering and environmental consultant services, and

WHEREAS, the City desires to engage the Consultant to be available, on an "as needed" basis, to investigate, as they may arise from time to time, the extent and character of soil and water contamination on City properties, conduct asbestos investigations, environmental site assessments, and provide other environmental engineering services as required and as specified in purchase orders, from time to time, hereinafter collectively referred to as the "Project."

NOW, THEREFORE, for and in consideration of the promises, terms and conditions and covenants set forth below, the parties hereto agree as follows:

I. SCOPE OF WORK

A. General

1. The Consultant shall perform professional services for the Project, as defined herein and as further described in Exhibit "A", which is attached hereto and made a part hereof for all purposes.
2. The Consultant shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all services furnished by the Consultant under this Agreement.
3. The Consultant shall perform such professional services as may be necessary to accomplish the work required to be performed under this Agreement, in accordance with this Agreement, applicable Texas Commission on Environmental Quality and Texas Department of Health Regulations, and any and all applicable State, Federal and Local laws. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its reports and other services.

4. The intent of this Agreement is to contract with a Consultant fully capable of carrying out all work set forth in the Agreement.
5. The Consultant shall have a Texas Registered Professional Engineer specializing in Environmental Engineering on staff to assist with the work provided herein, and shall have all equipment and personnel necessary to perform the services requested herein.
6. The Consultant shall provide all required traffic control for purposes of providing services under this Agreement.

B. Coordination

As requested by the City Engineer or the City Attorney's Office, the Consultant shall participate and assist the City, under the direction of the City Engineer and City Attorney's Office in meetings with the Federal, State, and Local regulatory agencies. Any communication or contact with such agencies shall be made only with the approval of the City Engineer and City Attorney's Office.

II. CONSIDERATION

A. Unit Prices

1. The City will pay the Consultant for the requested services in accordance with the unit price fee schedule attached hereto as Exhibit "B" and as further set forth herein.
2. The unit prices stated above includes the cost of salaries and wages paid to principals and employees engaged directly on the Project, with cost of fringe benefits, including but not limited to, social security contributions, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto.

A. Purchase Orders

1. The City will pay the Consultant upon submittal of an invoice for actual work performed in connection with each site investigation. The actual work shall be performed pursuant to a purchase order issued by the City. The Consultant shall not proceed with any work until such Purchase Order and a Notice to Proceed letter have been issued. The total amount of compensation paid to the Consultant under this Agreement shall not exceed **SEVEN HUNDRED FIFTY THOUSAND and NO/100 DOLLARS (\$750,000.00)**, except upon formal written amendment to this Agreement by the parties hereto.

The City Engineer or designate will notify the Consultant each time an investigation is required for a designated site. The Consultant shall develop an investigation plan for the designated site. Upon approval of the investigation plan by the City, the City shall arrange to issue a purchase order for the Consultant to proceed in relation to a designated site. Final payment for each site investigation will be made on the basis of actual work performed and the unit prices in this Agreement.

2. In no event shall compensation under this Agreement exceed \$250,000.00 per site under any conditions, except upon formal written amendment to this Agreement by the parties hereto.
3. The amount of compensation attributable to a Purchase Order issued by the City under this Agreement shall not exceed the compensation initially authorized in that Purchase Order under any conditions, except upon further written authorization. The Consultant shall promptly notify in writing the City Engineer or designate at any time that work authorized by any Purchase Order reaches 80 percent (80%) of the total compensation authorized by that Purchase Order. The Consultant agrees that the City Engineer can stop any work being performed by the Consultant at any time and may cancel any outstanding work under a purchase order without liability to the Consultant. The issuance of a purchase order does not guarantee any quantity of work to the Consultant.
4. In no event shall the Consultant continue to perform or furnish services pursuant to any Purchase Order issued under this Agreement if either one hundred percent (100%) of the compensation authorized in the Purchase Order or the maximum compensation authorized under this Agreement has been reached. The City shall not be responsible for payment to the Consultant for any work performed above these limitations and the Consultant hereby waives all its right to submit a claim for such additional work.

III. TIME OF PERFORMANCE

This Agreement shall remain in effect for two (2) years, with the option to renew for two (2) additional one-year terms, from the date of this Agreement. The Consultant will begin work within five (5) City working days of receipt of a written Purchase Order and a Notice to Proceed letter and shall complete the investigation and report within the designated time frame for each investigation as stated in the Notice to Proceed letter. Except as otherwise provided by this Agreement, the provisions of this Agreement apply to any and all obligations under Purchase Orders issued under this Agreement to the same

extent and in the same manner as they apply to all other services or other obligations required by this Agreement.

IV. CITY'S RESPONSIBILITIES

The City shall:

- A. Provide the Consultant with such plans, specifications, addenda, change orders, shop drawings or other information in the possession of the City that may assist the Consultant, but the City does not warrant that such information exists, is accurate, or can be located.
- B. Coordinate the activities of the Consultant. The City Engineer or designee shall act as the City's representative with respect to the Consultant's services to be performed under this Agreement.
- C. Provide all required access and legal authorization for the Consultant to enter each site for purposes of providing services under this Agreement.

V. GENERAL CONDITIONS

A. Termination

This Agreement may be terminated by either party upon five (5) days written notice in the event of failure to perform in accordance with the terms hereof by one party, through no fault of the other party. Additionally, the City may terminate this Agreement, without cause, upon fifteen (15) days written notice to Consultant. If this Agreement is terminated prior to the completion of the Project, the Consultant shall be paid to the extent services are rendered, and the Consultant will provide the City with a complete report of work completed prior to termination. Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Consultant and the City may withhold any payment to the Consultant for the purpose of setoff until such time as the exact amount of damages due the City from the Consultant is determined.

B. Insurance

The Consultant shall secure and maintain at the Consultant's expense such Comprehensive Liability, Property Damage Liability, Vehicle Liability and Workers' Compensation insurance as shall protect the Consultant from workers' compensation claims under applicable state law and from all claims from bodily injury, death, or property damage which may arise from the performance of his services under this Agreement. Provided, the Consultant shall provide or secure public liability insurance for persona injuries or death, arising out of any one accident or other cause, in a minimum

sum of **TWO HUNDRED FIFTY THOUSAND and NO/100 DOLLARS (\$250,000.00)** for one person and **FIVE HUNDRED THOUSAND and NO/100 DOLLARS (\$500,000.00)** for two or more persons; and in addition, shall provide property damage liability insurance in a minimum sum of **ONE HUNDRED THOUSAND and NO/100 DOLLARS (\$100,000.00)** for property damages arising out of any one accident or other cause, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claim Act, whichever is greater. Such insurance shall be available on a "per occurrence" basis for death or bodily injury or property damage which is caused by an occurrence which takes place during the policy period. **The Consultant shall procure and shall maintain at its expense Professional Liability Insurance for the benefit of the City to cover the errors and omissions of the Consultant, its principals or officers, agents, or employees in the performance of this Agreement, in the amount of One Million and NO/100 Dollars (\$1,000,000.00)**

The Consultant shall maintain said insurance with insurance underwriters authorized to do business in the State of Texas, satisfactory to City. All policies required by this Agreement, with the exception of Workers' Compensation and Professional Liability Insurance, shall name the City, its officials, servants, agents, and employees as additional insureds. All policies shall identify the name of the City project for which the insurance is being issued. The Consultant shall, prior to the execution of this Agreement, furnish the City with a certificate from the insurance carrier showing such insurance to be in full force and effect during the entire term of this Agreement, or shall deposit with City copies of said policies, if requested by City. Said policies or certificates shall contain a provision that written notice of cancellation or of any material change in said policy by the insurer shall be delivered to City **thirty (30) days** in advance of the effective date thereof and shall show the type, amounts, classes of operation covered, effective dates and dates of expiration of policies.

C. Indemnification

THE CONSULTANT SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS AND LIABILITY OF ANY KIND INCLUDING BUT NOT LIMITED TO ALL EXPENSES INCURRED IN THE INVESTIGATION, HANDLING, DEFENSE LITIGATION, SETTLEMENT AND/OR PAYMENT OF JUDGMENT INCLUDING COURT COSTS, AND ATTORNEY'S FEES, FOR BODILY INJURY, ILLNESS, PHYSICAL OR MENTAL IMPAIRMENT TO OR DEATH OF ANY PERSON, OR FOR DAMAGE OR DESTRUCTION TO ANY PROPERTY, INCLUDING THE LOSS OF USE THEREOF OR ARISING FROM OR RELATING TO ANY ACT(S) OR OMISSION(S) OF THE CONSULTANT, ITS PRINCIPALS OR ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF ANY SERVICES FURNISHED UNDER THIS AGREEMENT

WITHOUT LIMITING THE GENERALITY OF THE ABOVE, THE CONSULTANT FURTHER AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY, ITS EMPLOYEES, AGENTS AND ATTORNEYS FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, DAMAGE, EXPENSE, PENALTIES AND LEGAL AND INVESTIGATION FEES OR COSTS, ARISING FROM OR RELATED TO ANY CLAIM OR ACTION FOR INJURY, LIABILITY, BREACH OF WARRANTY OR REPRESENTATION, OR DAMAGE RESULTING FROM THE VIOLATION OF ANY ENVIRONMENTAL LAW OR OTHER STATUTE, ORDINANCE, RULE, REGULATION, JUDGMENT OR ORDER OF ANY GOVERNMENTAL OR JUDICIAL ENTITY WHICH ARE INCURRED OR ASSESSED AS A RESULT (WHETHER IN PART OR IN WHOLE) OF ANY ACTION OR INACTION OF THE CONSULTANT, ITS EMPLOYEES, AGENTS, SUCCESSORS OR ASSIGNS, UNDER THIS AGREEMENT. CONSULTANT'S OBLIGATIONS AND LIABILITIES UNDER THIS PARAGRAPH SHALL CONTINUE SO LONG AS THE CITY BEARS ANY LIABILITY OR RESPONSIBILITY UNDER THE ENVIRONMENTAL LAWS OR PENALTIES FOR ANY ACTION OR INACTION OF THE CONSULTANT AS STATED HEREIN. THIS INDEMNIFICATION SHALL INCLUDE, WITHOUT LIMITATION, COSTS INCURRED IN CONNECTION WITH ANY INVESTIGATION OF SITE CONDITIONS OR ANY CLEANUP, REMEDIAL, REMOVAL OR RESTORATION WORK REQUIRED BY ANY FEDERAL, STATE OR LOCAL GOVERNMENTAL AGENCY OR POLITICAL SUBDIVISION BECAUSE OF ANY ACTION OR INACTION OF THE CONSULTANT, ITS EMPLOYEES, AGENTS, SUCCESSORS OR ASSIGNS, UNDER THIS AGREEMENT. CONSULTANT AGREES THAT THIS INDEMNITY IS NOT AN ADEQUATE REMEDY AT LAW FOR CONSULTANT'S VIOLATION OF ANY PROVISION OF THIS SECTION. THE CITY SHALL ALSO HAVE ALL OTHER RIGHTS AND REMEDIES PROVIDED BY LAW OR OTHERWISE PROVIDED IN THIS AGREEMENT.

D. Independent Contractor

The Consultant is not an employee or agent of City by reason of this Agreement, or otherwise. The Consultant is an independent contractor, and shall be solely responsible for its acts or omissions arising from or relating to its performance of this Agreement.

E. Performance

The Consultant is not authorized to revoke, alter, relax, enlarge or release any requirement of the Specifications developed for Remediation nor to approve or accept any portion of work performed by the Remediation Contractor, unless specifically authorized in writing by the City Engineer, or designate.

F. Confidentiality

The Consultant agrees to notify and obtain written permission from the City prior to releasing any information to the news media, publishers, or other third party regarding the activities being conducted under this Agreement.

G. Consultant's Records

During the entire term of this Agreement and for no less than four (4) years thereafter, the Consultant shall maintain all its records for the period of time required by the applicable local, state, or federal regulation, as amended. As part of such records, the Consultant shall, in accordance with generally accepted professional accounting principles, maintain records of all its expenses incurred in connection with performance of this Agreement, and shall make the same available to City upon request, for purposes of audit, examination or copying.

H. Licenses, Permits and Laws

The Consultant shall, except as otherwise provided herein, without additional expense to the City, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, State, and Municipal laws, codes, and regulations, including but not limited to, Texas Water Code, §§26.341 - 26.359, and 40 CFR Parts 280 and 281, in connection with the work required by this Agreement.

I. Rights to Contracted Products

All reports or products prepared by the Consultant pursuant to this Agreement, but not including the Consultant's administrative communications and records, shall be delivered (hard copy and electronically) to and become the exclusive property of the City and may be used by the City in any way it may deem appropriate.

J. Auditing Records

Consultant's records subject to audit shall include but not be limited to records which, in the City's discretion, have a bearing on matters of interest to the City in connection with the Consultant's work for the City and shall be open to inspection and subject to audit and/or reproduction by City's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (a) Consultant's compliance with contract requirements, and (b) compliance with provisions for computing Direct Personnel Expense with reimbursables, if applicable.

Such records subject to audit shall also include those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Agreement. In those situations where Consultant's records have been generated from computerized data, Consultant agrees to provide City's

representatives with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange format.

The City or its designee shall be entitled to audit all of the Consultant's records related to this Project, and shall be allowed to interview any of the Consultant's employees, pursuant to the provisions of this section throughout the term of this Agreement and for a period of **three (3) years** after final payment or longer if required by law. Such audits may require inspection and photo copying of selected documents from time to time at reasonable times and places.

W. Time of Essence; Liquidated Damages

TIME IS OF THE ESSENCE in this Agreement. The Consultant agrees to adhere to the schedule mutually agreed to by the City and the consultant and established in each Purchase Order and Notice to Proceed letter. Failure of the Consultant to adhere to this schedule without due cause, approved in writing by the City Engineer, or designate, shall cause damage to the City which the Consultant agrees to compensate at the rate of **ONE HUNDRED AND 00/100 DOLLARS (\$100.00)** per day, without the right of setoff or counterclaims.

It is hereby understood and mutually agreed, by and between the Consultant and the City, that the date of beginning and the time for completion, as specified in each Notice to Proceed letter, are ESSENTIAL CONDITIONS in the Agreement; and it is further mutually understood and agreed that the work embraced in this Agreement shall be commenced on a date within five (5) City working days of receipt of each Purchase Order and Notice to Proceed letter.

The Consultant agrees that said work shall be prosecuted regularly, diligently, and uninterrupted at such rate of Progress as shall ensure completion thereof within the time specified. It is expressly understood and agreed, by and between the Consultant and the City, that the time allowed for the completion of the work described in each Notice to Proceed letter shall be a reasonable time for the completion of the same, excepting events beyond the control of the Consultant, such as delays imposed by the City or the Texas Commission on Environmental Quality, inclement weather, access difficulties, and unexpected mechanical equipment failures. The Consultant shall work diligently to overcome any such delays.

If the Consultant shall neglect, fail, or refuse to complete the work within the time specified in each Notice to Proceed Letter, or any proper extension thereof granted by the City, then the Consultant does hereby agree, as a part consideration for the awarding of this Agreement, to pay the City the amount specified in this Agreement, not as a penalty, but as liquidated damages for such breach of Agreement as herein set forth, for each and every calendar day that the Consultant shall be in default after the time stipulated in each Purchase Order for completing the work.

The said amount is fixed and agreed upon by and between the Consultant and the City because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the City would in such event sustain, and said amount is agreed to be the amount of damages which the City would sustain.

It is further agreed that TIME IS OF THE ESSENCE of each and every portion of this Agreement and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Agreement an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this Agreement. The Consultant shall not be charged with liquidated damages or any excess cost when the City determines in writing that the Consultant is without fault and the Consultant's reasons for the time extension are acceptable to the City.

X. Equal Employment Opportunity

In providing services under this Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Consultant shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this non-discrimination clause. The Consultant shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, age, sex or national origin. The Consultant shall incorporate the foregoing instruments of this section in all of its subcontracts for work to be performed on this Project.

M. Obligations of the Consultant with Respect to Certain Third Party Relationships

The Consultant shall remain fully obligated under the provisions of the Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the program with respect to which assistance is being provided under this Agreement.

N. Interest of Members of Local Governing Body or Other Public Officials

No member of the governing body of the City of El Paso, and no other public official of the City of El Paso who exercises any function or responsibility with respect to the program shall during his tenure or for one (1) year thereafter, have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Agreement.

O. Assignment, Transfers, Subcontracts

The Consultant agrees that the obligations authorized under this Agreement are not assignable or transferable and the Consultant agrees not to subcontract any of the work authorized hereunder, without the prior written approval of the City, except as noted herein. Any fees to be charged to the City for work to be performed by subcontractors must be approved prior to the work being performed.

The Consultant shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Project with respect to which assistance is being provided under this Agreement.

P. Change of Legal Status

In the event that there is a change in any way of the legal status of the entity that has entered into this Agreement, including but not limited to the dissolution of a partnership or a corporate entity, the City shall have the right to (1) immediately terminate this Agreement for convenience, or (2) consent to the change in the legal status and continue under this Agreement, or (3) enter into an Agreement with any person, corporation, or association that it deems to be qualified to perform the services requested herein with no further legal obligation or liability under this Agreement.

Q. Waiver

Neither the City's review, approval or acceptance of, nor payment for any of the Services performed by the Consultant shall be construed to operate as a waiver of any rights under this Agreement or any cause of action arising out of the performance of this Agreement. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right hereunder.

R. Law Governing Agreement

The laws of the State of Texas shall govern the validity, performance, interpretation and enforcement of this Agreement. Venue shall be in the courts of El Paso County, Texas.

S. Notices

All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

CITY: City of El Paso
Attn: City Manager
2 Civic Center Plaza
El Paso, Texas 79901-1196

COPY TO: City of El Paso
Engineering Department
Attn: City Engineer
#2 Civic Center Plaza
El Paso, Texas 79901-1196

CONSULTANT: AMEC Earth & Environmental, Inc.
125 Montoya Road
El Paso, Texas 79932

or to such other addresses that the parties may indicate to each other in writing from time to time.

T. Authorization to Enter Agreement

If the Consultant signs this Agreement as a corporation, each of the persons executing this Agreement on behalf of the Consultant warrants to the City that the Consultant is a duly authorized and existing corporation, that the Consultant is qualified to do business in the State of Texas, that the Consultant has full right and authority to enter into this Agreement, and that each and every person signing on behalf of the Consultant is authorized to do so. Upon the City's request, the Consultant will provide evidence satisfactory to the City confirming these representations.

U. Entire Agreement

This Agreement constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement shall not be amended or modified except by written instrument signed by both parties.

VI. COMPLIANCE WITH ALL LAWS - FEDERAL FUNDING REQUIREMENTS

Consultant, at Consultant's expense, agrees that it will operate and perform its responsibilities and covenants under this Agreement in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the City or Consultant with respect to the use of federal funds and Nondiscrimination in the

administration of contracts which are funded, in whole or in part, with federal funds.

Consultant shall at all times comply with all the applicable Federal Transit Administration regulations, policies, procedures and directives including without limitation those listed directly or by reference in the Master Agreement dated October 1, 2004 and amended from time to time during the term of this contract. The Consultant's failure to comply shall constitute a material breach of this Agreement.

Specifically, and not in limitation of the foregoing, Consultant agrees that the following covenants shall apply throughout the performance of this Agreement because federal funds are involved and that, in the event of breach of the above covenant or breach of any of the following covenants, City shall have the right to terminate this Agreement.

A. Anti-Kickback Rules

Salaries of architects, engineers, draftsmen, technical engineers, technicians and other employees and consultants performing work under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C., Sec. 874; and Title 40 U.S.C., Sec. 276c). The Consultant shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this Agreement to ensure compliance by subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors there under except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

B. Section 3 Clause

The following provisions are incorporated into this Agreement, as required by 24 CFR 135.20 (b):

1. To the extent that the work to be performed under this Agreement is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent

feasible, opportunities for training and employment be given lower income residents of the Project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the Project.

2. The parties to this Agreement shall comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of this Agreement. The parties to this agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
3. The Consultant shall send to each labor organization, or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
4. The Consultant shall include this Section 3 clause in every subcontract for work in connection with the Project and shall, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Consultant shall not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and shall not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of the construction contract, shall be a condition of the federal financial assistance provided to the Project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its Engineers and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract

through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

6. That in the furnishing of services hereunder for the purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Consultant shall furnish such services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, as said Regulation may be amended. Lessee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
7. That no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the performance of this Agreement.

C. Access to Records

In accordance with OMB Circular A-102, Attachment "O", Sec. 4h, the City, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Consultant which are directly pertinent to the City's Community Development Block Grant Program for the purpose of making audit, examination excerpts, and transcriptions.

D. Interest of Certain Federal Officials

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit to arise here from.

E. Davis-Bacon Wages

In preparation of his cost estimates and the Project budget, described in Sec. VI, Part C., and Sec. VI, Part D., hereof, the Consultant shall base such estimates and the project budget on the premise that the regulations and requirements enumerated in 29 CFR Part 5, Subpart A (Davis-Bacon and Related Act) apply to the project and must be followed and obeyed by the selected Consultant.

F. Termination for Cancellation of Grant

Should this Agreement be terminated as a result of cancellation of federal funds covering this Project, the City shall promptly notify the Consultant of the cancellation by certified mail-return receipt requested, whereupon the Consultant shall immediately, on receipt of the letter, cease and desist from performing any other work or services hereunder. In such an event, the Consultant will be paid for professional services performed to said date upon furnishing the City a progress report and an invoice to such date, and upon acceptance of the work by the City.


**WITNESS THE FOLLOWING SIGNATURES AND SEALS:
THE CITY OF EL PASO**

Joyce A. Wilson – City Manager

CONSULTANT: AMEC Earth &
Environmental, Inc.


Jamie R. Barnes, P.G., CAPM
Unit Manager

APPROVED AS TO FORM:



Theresa Cullen-Garney
Deputy City Attorney

APPROVED AS TO CONTENT:



Rick Conner, P.E.
City Engineer

(Acknowledgements begin on next page)

ACKNOWLEDGEMENTS

STATE OF TEXAS)

)

COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____,
2005, by Joyce A. Wilson as City Manager of the CITY OF EL PASO.

Notary Public, State of Texas

STATE OF TEXAS)

)

COUNTY OF EL PASO)

This instrument was acknowledge before me on the ____ day of _____,
2005, by Jamie R. Barnes, as Unit Manager of AMEC Earth & Environmental, Inc.

Notary Public, State of Texas

EXHIBIT " A "

PROJECT SCOPE

TITLE: Environmental Engineering Consultant Services

LOCATION: Citywide

BUDGET: \$750,000.00 / Two Years

GENERAL DESCRIPTION: See attached Scope of Work.

SERVICES REQUIRED:

☒ Investigation

☒ Planning

☒ Soils Investigation

☒ Historical, archeological services

☒ Bidding & Construction

PRODUCTS REQUIRED:

☒ Study / Report

☒ Plans, Specifications, Estimates

GENERAL REQUIREMENTS AND CRITERIA:

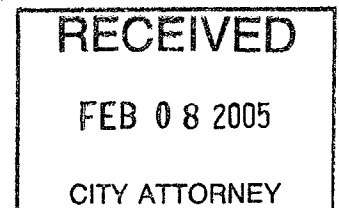
1. Design must meet all applicable City Codes and Ordinances.
2. Design must comply with Engineering Department Guidelines.
3. Design must comply with all local, state and federal laws and regulations, including but not limited to the Americans with Disabilities Act.

OTHER CONSIDERATIONS:

1. Work to be coordinated with the Engineering Department.

PROJECT SCHEDULE:

This project is for a 730 day contract with the option of two-one year renewals.



Environmental Engineering Consultant Services
Page Two

NOTE:

Consultants must bring copies of licenses for:

- 1. Registered Professional Engineer.**
- 2. Individual Asbestos Consultant**
- 3. Asbestos Consultant Agency**

Scope of Work

Environmental Engineering Consultant Services

Leaking Petroleum Storage Tank Sites:

To investigate the extent and character of soil and water contamination on City properties. The investigation phase includes the drilling and installation of monitoring wells, testing of soils and water, classifying soils, remediation services on hazardous and non-hazardous work sites, providing recommendations on environmental remediation strategies that are cost effective and efficient.

It is preferred, but not mandatory, that the selected consultant have a well driller licensed in the State of Texas employed directly by the Consultant. If the consultant does not have a licensed well driller on staff, then subcontracting out this service may be acceptable provided selected drilling company has been approved by the City Engineering Department. Subsurface drilling capabilities must be able to go to 200 ft. below grade and install a 2 inch monitor well and to 100 ft. below grade and install a 4 inch monitor well.

It is desirable that the consultant have the capability of performing necessary environmental testing services in its own laboratory. If consultant does not have such capability, subcontracting out testing services may be acceptable, provided that such laboratory is located within the State of Texas.

Consultant shall submit project reports for each location. Reports shall include the following information where appropriate:

- a. A description of the site along with a vicinity map depicting the main suspected source of contamination, and any water wells within a 1/2 mile radius.
- b. Copies of boring logs.
- c. Classification of soils encountered.
- d. A monitor well installation detail, if installed.
- e. A detail of the chemical analysis performed showing levels of contamination at the various sample depths both for soils and waters.
- f. A determination of the groundwater flow direction.
- g. A discussion on the findings and methodology used to determine the findings.
- h. A conclusion with recommended strategies for possible remediation.

Environmental Engineering Consultant Services

Scope of Work

Page Two

Consultant must be a registered LPST Corrective Action Specialist as well as have on staff a registered "Corrective Action Project Manager" as required under Title 30, Texas Administrative Code, Chapter 334, Subchapter J.

Asbestos:

Consultant must be a Licensed Asbestos Consultant Agency as well as have a Licensed Asbestos Individual consultant on staff to prepare abatement project specifications.

PLEASE NOTE THAT ANY FIRM SUBMITTING FOR THESE SERVICES MUST BE A LICENSED ASBESTOS CONSULTANT AGENCY. IT IS NOT ACCEPTABLE TO SUBCONTRACT OUT THESE SERVICES.

Phase 1 - Environmental Site Assessments

Consultant must have two or more years experience in conducting Phase 1 - Environmental site Assessments on vacant properties as well as on constructed / established facilities as per ASTM Standard Practice E 1527.

Consultant shall provide other environmental engineering services as required.

PROPOSED UNIT FEE SCHEDULE

City of El Paso Environmental Engineering Consulting Services Contract
Charges will be made at the following unit rates for all project related time,
including travel to and from the project site.

**Unit Fee Schedule****LABOR****Labor Category**

Program Manager/Principal	\$125.00
Senior Professional	\$115.00
Health and Safety Officer	\$105.00
Project Manager/Senior Professional	\$100.00
Project Engineer/Geologist/Specialist	\$90.00
Level 1 Staff Engineer/Geologist/Specialist	\$80.00
Level 2 Staff Engineer/Geologist/Specialist	\$75.00
Senior Field Professional	\$65.00
Level 3 Environmental Specialist/Field Tech	\$55.00
Junior Scientist/Engineer/Technician	\$50.00
GIS/CAD Technician	\$50.00
Field Technician	\$55.00
Admin/Clerical 2	\$45.00
Admin/Clerical 1	\$40.00
Technician 1	\$50.00
Technician 2	\$45.00
Corporate Consultants	Negotiated based upon specific needs
Contracted Consultants	Cost plus 5%

Personnel Markup for Health and Safety

Level A, B, or C - Additional fees applicable Additional fees are applicable to Level C and Level B work.

Itemized invoices will be provided should higher level of PPE be required

Legal tasks requiring deposition or court appearances will be increased

100 percent for deposition and court appearance time.

All overtime hours worked (in excess of eight hours per day or work on Saturday or Sunday)
are subject to 25% markup of listed hourly rates if work is requested
by Client or are reasonably necessary to meet job schedules.

All costs not specified are subject to standard City-negotiated markup



City of El Paso
Environmental Engineering Services Contract
Vehicles & Miscellaneous Charges

Printing - Other	Cost + 5%	Decontamination Equipment	
Air Fare, Taxi, Car Rental, etc.	Cost + 5%	(Sprayers, Buckets, Soap)	\$ 20.00/Day
Rented Pickups and Cars	Cost + 5%	Air Quality Sampling Equipment	\$ 30.00/Day
Rented Heavy Equipment	Cost + 5%	PCB Field Test	\$ 20.00/Test
Chartered Aircraft	Cost + 5%	Colorimetric Field Test	\$ 30.00/Test
Per Diem	\$ 70.00/day	Fit Test	\$ 100.00/Man
Miscellaneous Subcontracts	Cost + 5%	Personal Air Sampling Pump	\$ 15.00/Day
Sedans and Pickups -2WD	\$ 0.45/Mile	HVAC Sampling Pump	\$ 20.00/Day
	Or \$55/day	SCBA, 45 Minute	\$ 100.00/Day
Sedans and Pickups - 4WD	\$ 0.50/Mile	pH/Conductivity Meter	\$ 20.00/Day
	Or \$60/day	Hydropunch	\$ 500.00/Day
Generator	\$ 80.00/Day	Hydropunch Expendibles	
Air Compressor - 175 CFM	\$ 180.00/Day	(Drive Point/Screens)	\$ 65.00/Hole
Acker	\$ 50.00/Day	Electromagnetometer	\$ 60.00/Day
Water Quality Equip.	\$ 50.00/Day	(3-Day Minimum)	
Water Probe	\$ 20.00/Day	Magnetometer Polycorder	\$ 40.00/Day
Interface Probe	\$ 25.00/Day	Slug Test System	
PID Meter	\$ 90.00/Day	(Thor or In-Situ) with Data Logger	\$ 150.00/Day
Oxygen/Combustible Gas Meter	\$ 37.50/Day	Cable Locator/Metal Detector	\$ 20.00/Day
Methane Gas Detector	\$ 37.50/Day	Hand Auger	\$ 35.00/Day
Hydrogen Sulfide Detector	\$ 30.00/Day	Pump - 2" Submersible	\$ 100.00/Day
Respirators with Cartridges	\$ 50.00/Day	Trash Pump	\$ 50.00/Day
Tyveks	\$ 12.00/Each	Field Computer	\$ 30.00/Day
Saranex Tyveks	\$ 22.50/Each	Peristaltic Pump	\$ 25.00/Day
Carbon Filter	\$ 50.00/Day	Pneumatic Pumping System	\$ 25.00/Day
Gloves	\$ 2.00/Each	Oil Recovery Pump (4")	\$ 50.00/Day
Padlocks	\$ 17.50/Each	Disposable Bailer	\$ 10.00/Each
Field Chloride Test	\$ 25.00/Day	All other equipment	\$ Cost +5% or negotiated per work order
Indicator Tubes	\$ 5.50/Each		
55-Gallon Drums	\$ 50.00/Each		
Steam Cleaner	\$ 125.00/Day	Travel Subsistence for Personnel	
Soil Gas Kit	\$ 100.00/Each	(Usually Billed @ Per Diem Rate, but in Some Cases at	
Hanby Field Test	\$ 35.00/Each	Actual Expense	Cost +5%



February 7, 2005
Revision No. 1

City of El Paso
Engineering Department – 4th Floor
Two Civic Center Plaza
El Paso, TX 79901-1196

Attention: Mr. Ziad Al-Dasouqi, P.E.
Civil Engineer IV


**Subject: City of El Paso
Environmental Engineering Consulting Services Contract
El Paso, Texas**

Dear Mr. Al-Dasouqi:

Following our conversations on February 4, 2005, AMEC Earth & Environmental, Inc. (AMEC) has revised our suggested fee structure for the City of El Paso's Environmental Engineering Consulting Services contract. We continue to remain open to any discussion, suggestion or modification that the City may have.

We look forward to completing contract negotiations as soon as possible.

Respectfully submitted,
AMEC Earth & Environmental, Inc.



Jamie R. Barnes, PG
Unit Manager
Copies: Addressee (3)

AMEC Earth & Environmental, Inc.
125 Montoya Road
El Paso, Texas 79932
Tel (915) 585-2472
Fax (915) 585-2626
www.amec.com/earthandenvironmental